

REMARKS

Claims 18-24, 26-28 and 30-40 have been rejected under 35 USC 112, first and second paragraphs. Claims 18, 23, 26, 27 and 40 have been amended for improved clarity under 35 USC 112, second paragraph. With respect to the rejections under 35 USC 112, first paragraph, Applicants respectfully traverse the rejection. More specifically, paragraph [0020] and Figure 1 sufficiently enable one skilled in the art. For example, the specification states “An encoding module COD is connected in series...in such a way that define proportion of its output is concentrated in a narrow-band spectral range. To this end, the encoding module has a scrambler with subsequent CMI or RX encoding....” Additionally, the paragraph states “...opto-electric modulation and amplification of the decoupled check-back signal S_{osc} is linear and not amplitude limited....” It is respectfully requested that the rejection be withdrawn.

Claims 18-21, 26 and 40 have been rejected under 35 USC 103(a) as unpatentable over Thanhaeuser. Claims 22-24, 27-28 and 30-39 have been rejected under 35 USC 103(a) as unpatentable over Thanhaeuser in view of Oha. The rejections are respectfully traversed.

The Examiner states that Thanhaeuser does not disclose “that the frequency range of the check-back signal is as narrow-band spectral range as possible; isolating the most narrow-band spectral range possible of the check-back signal; and the amplification of the check-back signal decoupled from the transmission system is linear and as far as possible unlimited in amplitude.” However, the Examiner states that “it would have been obvious...to improve the method and apparatus of Thanhaeuser by employing narrowing the spectral and limiting the amplification in linear range.” Applicants agree that the reference fails to disclose these features. However, the Examiner’s reasons for modifying the reference fail to meet a *prima facie* case of obviousness.

The instant claimed invention “employs” use of an amplification that is linear without amplitude restriction, the result being that sensitivity is thereby increased. Clearly, as the Examiner states, this limitation is not disclosed by the applied reference. The Examiner then states, using impermissible hindsight, that it would have been obvious to modify the reference using that which is taught by the claimed invention, namely amplification that is linear without amplitude restriction. No teaching or suggestion in the reference is cited, nor does the Examiner provide any reason why this modification would have been obvious to the skilled artisan. Simply stating that something is obvious does not make it so. Applicants therefore traverse the

rejection, and respectfully request that the Examiner withdraw it.

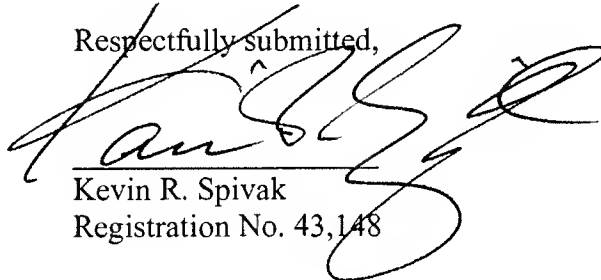
Oha is cited as disclosing an additional check-back signal, but fails to disclose the features noted above, and required by the claimed invention.

Since the recited structure and method are not disclosed by the applied prior art, either alone or in combination, the claimed invention is patentable.

In the event any further matters requiring attention are noted by Examiner, or in the event that prosecution of this application can otherwise be advanced thereby, a telephone call to Applicants' undersigned representative at the number shown below is invited.

Applicants hereby petition for the Commissioner to charge any additional fees or any underpayment of fees which may be required for this Amendment and which may be required to maintain the pendency of this case at any time during prosecution, or to credit any overpayments, to Deposit Account No. 04-1061, referencing Attorney Docket No. 39090-28.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin R. Spivak", is written over a horizontal line. The signature is stylized and cursive.

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